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No. 630

In the Supreme Court of the United States

OCTOBER TERM, 1943

EDWARD G. BUDD MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

INDEX

AUTHORITIES CITED

573362—44——1

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OPINIONS BELOW

The opinion of the court below (R. 1516–1526, 1539–1540) is reported in 138 F. (2d) 86. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1094–1128) are reported in 41 N. L. R. B. 872.

JURISDICTION

The decree of the court below (R. 1541–1543) was entered on November 6, 1943. The petition for a writ of certiorari was filed on January 25,

1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the finding of the Board that petitioner dominated and interfered with the administration of, and contributed financial and other support to, a labor organization of its employees (known as the Employees Representation Association) in violation of Section 8 (2) and (1) of the Act.

2. Whether the Board abused its discretion in concluding that, in the circumstances of this case, it will effectuate the policies of the Act to require petitioner to withdraw recognition from and completely disestablish the labor organization found to be company-dominated.

3. Whether there is substantial evidence to support the finding of the Board that petitioner discharged two of its employees because of their union membership and activity, thereby violating Section 8 (3) and (1) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 24–25.

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order on June 10, 1942 (R. 1094–1128). The facts as found by the Board and as shown by the evidence may be summarized as follows:[1]

In July or August 1933, shortly after passage of the National Industrial Recovery Act,[2] a local of the United Automobile Workers of America, affiliated with the A. F. of L., began to organize petitioner's employees (R. 1098; 24, 43, 429, 727). Shortly thereafter a group of employees in petitioner's shipping department decided to "form an organization of their own" (R. 1098; 150). Speaking for themselves alone, the shipping department employees met with a group of high-ranking management officials on August 24, and requested their cooperation (R. 1098; 151–152, 227–229, 435–437, 438, 608–609, 724). The basis of discussion at this meeting was a copy of an "Employees Representation Plan" then in operation at another plant in the industry; it had been brought to the meeting by Assistant Works Manager Sullivan (R. 1098; 152–153, 610, 722–723). After considering the draft, the shipping-room employees asked the management representatives to revise it in certain respects, to present the revised version to

[1] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

[2] 48 Stat. 195.

the employees generally, and to hold an election to select representatives from the entire plant to consider the proposal (R. 1098–1099; 153–154, 610–611).

Petitioner's Personnel Director McIlvain and Assistant Works Managers Mahan and Sullivan thereupon drew up a typical 1933 Employees' Representation Plan (R. 1099; 156–157, 1133–1142).[3] It gave the management veto power over amendments (R. 1142), the right to attend meetings of employee representatives (R. 1138–1139), and the power to remove a representative by terminating his employment or transferring him from one voting district to another (R. 1136). There was no provision for membership or dues; all non-supervisory employees of 90 days' standing were permitted to participate, and employee representatives were required to be employees of the Company for one year or more (R. 1136).

The Plan was put into effect by petitioner's unilateral action on September 5, 1933, when the management made its "Preliminary Announcement of the Establishing of a Budd Employee Representative Association," distributed copies of its "Proposed Plan" to the employees, and di-

[3] While preparing the Plan, the management officials consulted with Thomas Alminde, leader of the shipping department employees' movement to form an "inside union," but the Plan as a whole was never submitted to Alminde for approval (R. 125, 156–157, 437–438).

rected the latter to select representatives "exclusively of your own group" who "shall immediately organize and adopt a plan to regulate their operations" (R. 1099–1100; 19–20, 55, 157, 611–612, 724, 830, 1130–1142). The nominating election held that day and the final election held two days later on September 7, 1933, which resulted in the election of 19 employee representatives were held on plant premises, all of the expenses being borne by petitioner (R. 1099–1100; 24–25, 56, 157–159, 229, 612). Although petitioner's announcement of September 5 treated establishment of the Plan as conditional on its acceptance by the employees, the Plan was put into effective operation by the management and the employee representatives immediately after the elections, without further action by the employees (R. 1100–1101; 83, 84, 101–102, 160, 212, 223). Officers were elected and joint meetings were held according to its terms (R. 1100–1101; 101–102, 159–161, 612–613, 1138–1140).[4] Efforts by the representatives to amend the Plan were blocked by the management, exercising its veto power, on the ground that it wished to retain a

[4] Before the Board and the court below, petitioner contended that the 1933 Plan was never put into effect and remained at all times no more than a proposal. Rejection of this contention by the Board and the court below (R. 1109, 1520) was clearly warranted (R. 31, 47–48, 83, 84, 160, 162–163, 212, 221, 1144; see also R. 24, 56–57, 98, 102, 196–197, 287, 730). Petitioner does not appear to press it here (Pet. 4).

"guiding hand" in the Association (R. 1101–1102; 31, 613–614, 726–727, 761, 1408–1409, 1413).

While thus placing its full weight behind the Association, which it had organized and established for its employees, petitioner made clear its opposition to any "outside organization" and those "who are doing their utmost to stir up strife within the company" (R. 1102–1103; 1414–1416). Petitioner's treasurer and president issued statements on October 12 and November 9, 1933, respectively, warning against attempts to "mislead the less thoughtful members of our organization," announcing petitioner's desire "that our employees may protect themselves against this mischievous attack," and reminding the employees that "you and we have prevented outside interference in our affairs" (R. 1102–1104; 1143–1153, 1414–1416). An advertisement published by the management on November 15, 1933, contained a scarcely veiled threat to discharge the leaders of the A. F. of L. Union then conducting a strike against petitioner unless they "see their error and become loyal employees" (R. 1104; 35–36, 1154–1156).

In November 1933, petitioner ceased to oppose changes in the Plan, and its revision was undertaken by the representatives elected thereunder (R. 1104–1105; 120–121, 761). Changes were made, after consultation with William H. Davis, chairman of the Compliance Board of the N. R

A., who was then investigating charges against petitioner which had been filed by the A. F. of L. (R. 1104–1105; 116, 118–123, 163–164, 165–168, 768, 836–841). The final revision eliminated all references to management participation in employee activities but repeated verbatim many of the other provisions of the 1933 Plan (R. 1105; 1382–1391, compare with R. 1134–1142).[5] The Plan, as revised, was printed by petitioner and distributed to the employees (R. 75, 124, 163). Arrangements were made for the holding of an election on March 9 by N. R. A. officials to determine whether the employees wanted the Plan as revised, the A. F. of L., any other organization, or "no self-organization" (R. 1105; 170–174, 1269–1274). Although the N. R. A. officials, on March 8, announced a postponement of the election, it was nevertheless held in the plant on March 9 by public accountants whose fees were paid by petitioner (R. 1105; 139–140, 175–179, 231–232, 727–728, 769). The Association, under

[5] In addition, the 1934 Plan retained several provisions which purported to bind the management and express its position with respect to its relations with the employees (R. 1388–1391; compare with R. 1138–1142). See particularly Art. VIII, par. 4 (R. 1390; compare with R. 1141) which reads:

"4. The management of the Company assures the employees that in no case will the presentation of the employee's grievance, in any manner above set forth, react in any way to the disadvantage of the employee, as it is the personal wish of the Management that each employee have complete freedom of action in such matters."

the Plan, polled 3,152 votes to 1,995 for the A. F. of L. (R. 1105; 1275).

Following the election, the Association continued its uninterrupted existence. The representatives elected under Company auspices and at the Company's direction in 1933 continued to meet in the plant and to act upon employee grievances (R. 1105; 287, 730–731, 763–764). Agreements between the Company and these representatives, arrived at in 1933, were continued in effect after March 1934 without renegotiation (R. 1101, 1106; 384–385, 618, 621–622, 762, 764, 765). The Plan, as revised in 1934, was still in effect with minor modifications at the time of the hearing in this case in January 1942 (R. 1105–1106; 1242–1255). In September 1941, petitioner formally announced its recognition of the Association as the exclusive representative of the employees (R. 1107; 1257).

The Association has never held any general membership meetings (R. 1107; 307). It collects no dues (R. 1107; 353). All non-supervisory employees in the plant are treated as members, and no membership records are kept other than lists of those who vote in the elections (R. 1106–1107; 60–61, 307–308, 349–353, 1252).

The Association's expenses have at all times been kept at a minimum by the generous aid which it has received from the management. The initial steps in its formation and revision in 1933 and 1934 were all financed by petitioner (*supra*,

pp. 4–5, 7).[6] Since 1933, all elections of employee representatives have been conducted on company premises (R. 1110, 1111; 109, 297–298, 354, 649–650, 732, 769–770). Until 1936, petitioner paid the cost of these elections (R. 1110; 187, 229, 234, 266–267, 296, 454–455, 649–650, 769–770). All meetings of the employee representatives and their committees have also been held on company time and property (R. 1101, 1106, 1110; 305, 352, 377–378). Until 1937, this use of petitioner's premises was granted rent free (R. 1106; 330–331, 357–358; 618–620, 761–762, 1171–1188). Since November 1933, employee representatives have been paid their basic wage rate for attending to the affairs of the Association during working hours (R. 1101; 384–385, 730–731, 763–764). The "extraordinary leniency" with which petitioner treated the Association representatives was summed up by the court below as follows (R. 1524):

> The testimony shows to what very great lengths the employer went in its parental treatment of the Association and its officers. The petitioner permitted the employee representatives to conduct themselves about as they wished. They left the plant at will whether on personal business or on the business of the Association. Some of them did very little or no work but they received full pay. It is clear that some of them,

[6] As late as February 1934, the Association had no funds whatsoever (R. 124; see also R. 59).

> Walter Weigand for example, were not disciplined because they were representatives. * * *[7]

In 1937, the Association made an arrangement with petitioner which virtually eliminated the necessity for such assistance as the payment of election expenses and the rent-free use of plant premises which had previously been granted. The "Employees' Exchange" was founded by officials of the Company in 1928 and incorporated in 1931 (R. 1106; 899–901, 904, 1189–1193). Pursuant to an arrangement with the management, it sold candy and other items on the plant premises, and devoted the profits of these operations to various welfare services for petitioner's employees (R. 1106; 766, 902–904). In 1937, the Employees' Exchange and the Association agreed that the latter would promote the Exchange's sales and in return the Exchange would give 50 percent or more of its profits to the Association (R. 1106; 908, 1043–1045, 1194–1197). Petitioner gave its consent to this arrangement and, in 1938, became a formal party to a tri-partite agreement which is still in effect (R. 1106; 657, 767–768, 909–910, 1045).[8]

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[7] See R. 375–380, 531, 714, 801, 1049–1050, and p. 11, *infra*.

[8] This arrangement secured to the Association its first regular source of income and netted it $5,000 in 1941 alone (R. 338, 358, 911–912). Both before and after this arrangement was made, the Association's only other method of securing funds was the holding of social affairs (R. 358–359).

The Union[9] which filed the charge in this case began an organizing campaign among petitioner's employees in November 1940 (R. 1107; 7). In July and September 1941, petitioner discharged two employees who, although formerly active in the Association, had become active on behalf of the Union.

Walter Weigand, employed by petitioner in 1936, was elected as a representative in the Association in 1938 and served in that capacity and on various Association committees from that date until his discharge (R. 1114; 530, 540, 542, 1211, 1213, 1226, 1228, 1243). After his original election, Weigand devoted almost all of his working time to Association business and his own personal affairs, doing very little production work (R. 1115, 1117; 535–536). Despite complaints about his absence from work over a period of years by all of his immediate supervisors (R. 1117; 692–697, 709–710, 716–717, 792–798, 801–804, 811–813, 879–880, 884–887), he was retained by petitioner because, since he "was a representative of the men, * * * it wasn't right to discharge him" (R. 1117; 798, 884, 892).

Weigand joined the Union in March 1941 (R. 1115; 544). On July 22, he disclosed his membership to two Association officials, Mullen and Rattigan, and sought to persuade them to sup-

[9] International Union, United Automobile Aircraft & Agricultural Implement Workers of America, affiliated with the C. I. O. (R. 1094; 1, 7).

port the Union (R. 1115; 547). On July 23, these three men conferred with a union organizer on a street corner in Philadelphia (R. 1115; 548–549). On the next day, Mullen told Weigand that he had just come from a conference with Personnel Director McIlvain and Works Manager Mahan, and that they had been seen talking with the union organizer the night before. He accused Weigand of getting him "in a jam" (R. 1115; 549–550). Weigand was discharged when he came to work the next day (R. 1116; 552–553). The reason given on his lay-off slip was "Inattention to duties" (R. 1116; 1265).

Milton T. Davis was first employed by petitioner in 1933 (R. 1121; 494). On September 9, 1941, he was laid off during a reduction in force in his department (R. 1121; 496, 956, 1266). He was told by his foreman at the time that he would be sent for in about 10 days (R. 1121; 523). Davis had joined the Union in July 1941 and had been active on its behalf (R. 1121; 495–496). After his lay-off on September 9, he distributed union leaflets at the plant gates (R. 1121; 501–502). When work resumed in his department about 10 days after his lay-off, Davis was not recalled and his subsequent repeated applications for employment were rejected (R. 1121–1122; 496–498, 499–501), although men who had been laid off in Davis' department were being taken back at this time (R. 1121–1122; 496, 522–523, 957, 1022).

Petitioner contended that Davis was discharged on September 9, rather than laid off, that he had been considered unsatisfactory for 3 years, and that it had merely waited for the first general lay-off to effect his discharge (R. 1122; 957–958, 964–966, 972, 978, 1017–1018). The Board rejected this contention in view of the fact that Davis had not been laid off on the occasion of a general lay-off earlier in 1941 (R. 1122–1123; 967).

On the foregoing findings, the Board concluded that petitioner had dominated and interfered with the administration of the Association and had contributed financial and other support to it in violation of Section 8 (2) of the Act (R. 1111, 1125), that petitioner has discriminated with respect to the hire and tenure of employment of Walter Weigand and Milton T. Davis, thereby discouraging membership in the Union, in violation of Section 8 (3) of the Act (R. 1118, 1123, 1125), and that by the above acts petitioner had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (1) of the Act (R. 1111, 1118, 1123, 1125–1126). The Board ordered petitioner to cease and desist from its unfair labor practices, to cease and desist from giving effect to any contracts between it and the Association, to withdraw recognition from and disestablish the Association as representative of any of its employees

for collective bargaining purposes, to reinstate Weigand and Davis with back pay, and to post appropriate notices (R. 1126–1128).

On September 7, 1943, the court below handed down its opinion enforcing the Board's order without modification (R. 1516–1526). On September 16, 1943, petitioner requested a rehearing and certain modifications of the court's opinion (R. 1527–1535). The court denied the petition for rehearing on October 25, 1943, at the same time modifying its opinion in certain respects (R. 1539–1540). Its decree was issued on November 6, 1943 (R. 1541–1543).[10]

ARGUMENT

1. In attempting to present what it conceives to be novel questions for decision by this Court, petitioner, throughout its Petition and supporting Brief, relies on fundamental assumptions which are at variance with well supported findings of the Board which were upheld by the court below.

Petitioner repeatedly asserts that "There is no finding by the Board or by the Court and no testimony that the Company in any way coerced or *actually* dominated the employees in connection with the preparation of the plan" (Pet. 4, 5, 13, 17, 20). In fact, however, the Board found that petitioner "gave direction" to the movement to form an unaffiliated organization and drew up a

[10] The decree modified Paragraph 2 (d) of the Board's order in a manner not material here (R. 1128, 1543).

Plan which included "provisions for [petitioner's] participation in the affairs of the employees," that the Plan "thus took form and developed according to the desires of" petitioner, that petitioner had a "part in the formation of the bargaining agency," and that petitioner "sponsored" the Association and "launched it among the employees" (R. 1108–1109). Upholding these findings, the court below concluded that "the plan and the Association were in fact sponsored, largely created and supported by the petitioner" (R. 1520). The findings are supported by the record. If the organization of a bargaining mechanism in all its details, including the qualifications of employee representatives (*supra*, pp. 3–5), its unilateral establishment among the employees (*supra*, pp. 4–5), the calling and management of elections of employee representatives (*supra*, pp. 4–5), and the limitation of the employees' choice of representatives "exclusively" to "your own group" (*supra*, p. 5) do not constitute domination of employee activities, then there is no such thing as domination. Moreover, effective domination would appear even if what the court below called petitioner's "cooperative attitude toward the Association" (R. 1520) were alone considered. As the court noted, "The Association could not have continued to exist had the Budd Company withdrawn its support" (R. 1520). In such a situation employer domination is complete.

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Petitioner's repeated assertions that its "assistance" in 1933 was all granted "at the express request of the employees" (Pet. 17, 3, 5, 13, 20) is at best misleading. The Board recognized that the original movement looking to formation of an unaffiliated union came from the shipping department employees and that the latter requested the management's cooperation (R. 1098, 1108). But the movement was limited to the shipping department (R. 227–229, 435, 438, 724) which numbered no more than 85 out of a total of 4,500 employees in the plant (R. 721). Thus, so far as the bulk of the employees were concerned, the Association was entirely the creation of the management. Petitioner's imposition of the Plan and the Association on all of its employees certainly cannot be justified on the ground that it may have accorded with the wishes of a few of them.[11] In any case, not even a request for assistance by a labor organization which represents a majority of the employees can justify wholesale intervention by the employer. Cf. *National Labor Relations Board* v. *Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, 694–695.

Petitioner's assertions that the Association which was in existence after the Plan was revised in 1934 was organized by the employees or "by their representatives" (Pet. 3, 17) are likewise

[11] Alminde, treated by petitioner as "spokesman" of the employees (Pet. 4), spoke for the shipping department alone (R. 435, 438). See fn. 3, *supra*, p. 4.

incorrect. The 1934 Plan was prepared by representatives elected at the management's direction and under management-prescribed restrictions (*supra*, pp. 4–5, 6–7). "The reorganization proceeded by revision [of the employer-drawn 1933 plan] rather than by original creation." *National Labor Relations Board* v. *Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 56. (See *supra*, p. 7.) The employees elected in 1933 continued in office under the 1934 Plan without even going through the formality of a new election, a fact which "alone established an appearance of continuity between the two" allegedly distinct arrangements. *Westinghouse Electric & Mfg. Co.* v. *National Labor Relations Board*, 112 F. (2d) 657, 659, 660 (C. C. A. 2), affirmed, 312 U. S. 660. Hence, the Board properly found that the Association, after March 1934, was the same organization as that which had been established by petitioner and not an independent creation of the employees (R. 1109).

Petitioner's statement that the revised 1934 Plan contained no provision which would have rendered it unlawful under the Act (Pet. 6, 9) is likewise incorrect. It contained several features which the courts have frequently recognized as indicative of company domination: the absence of a requirement for the payment of dues;[12] the

[12] *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 245; *National Labor*

provision under which all employees were treated as members, with no arrangement for individual membership or membership records;[13] and the absence until 1937 of any provision for membership meetings.[14]

Petitioner's assertion that all company support was withdrawn before passage of the Act in 1935 (Pet. 13) is inconsistent with the Board's square holding to the contrary (R. 1109, 1110, 1111), upheld by the Court below (R. 1522–1524).

Relations Board v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 269; *American Smelting & Refining Co.* v. *National Labor Relations Board*, 126 F. (2d) 680, 683 (C. C. A. 8); *Colorado Fuel & Iron Corp.* v. *National Labor Relations Board*, 121 F. (2d) 165, 168 (C. C. A. 10); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 645 (App. D. C.); *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. (2d) 930, 937 (C. C. A. 1); *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61, 64 (C. C. A. 2), affirmed as modified, 309 U. S. 629; *Wilson & Co., Inc.*, v. *National Labor Relations Board*, 103 F. (2d) 243, 251 (C. C. A. 8). Cf. *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. (2d) 254, 259 (C. C. A. 3), certiorari denied, 308 U. S. 615.

[13] *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 645 (App. D. C.); *American Enka Corp.* v. *National Labor Relations Board*, 119 F. (2d) 60, 61 (C. C. A. 4).

[14] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 269; *American Smelting & Refining Co.* v. *National Labor Relations Board*, 126 F. (2d) 680, 683 (C. C. A. 8); *Colorado Fuel & Iron Corp.* v. *National Labor Relations Board*, 121 F. (2d) 165, 168 (C. C. A. 10); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 645 (App. D. C.); *American Enka Corp.* v. *National Labor Relations Board*, 119 F. (2d) 60, 62 (C. C. A. 4).

Petitioner insists that the generous assistance which it lavished upon the Association was all the result of "collective bargaining" (Pet. 3, 9–10, 14, 23, 24). However, this alleged bargaining was conducted with an organization dominated and supported by the Company, as the Board noted (R. 1109). The first concessions were granted in 1933, even before the events of 1934 which petitioner contends freed the Association from prior dependence on the company (Pet. 21–22), and these concessions were continued in effect thereafter (*supra,* p. 8). Moreover, the "collective bargaining" in question was a sham, consisting in most cases of no more than a request by the Association for a particular kind of assistance and petitioner's prompt granting of the request (see, *e. g.,* R. 649, 657, 762, 770). Finally, petitioner's concessions to the Association went far beyond what any of the contracts required. Thus, the favored position given to the Association representatives (*supra,* pp. 9–10) was in no way justified by the very limited terms of the applicable provision in the working agreements (R. 1255).

With respect to petitioner's interference with and domination and support of the Association, the petition presents no more than the question whether the Board's findings that petitioner violated Section 8 (1) and (2) of the Act are supported by substantial evidence. The evidence reviewed in the Statement above fully supports the Board's findings, and the decision of the court

below upholding those findings is correct. Accordingly, no further review by this Court is warranted.[15]

2. In representing this case as presenting novel, undecided questions, petitioner has adopted an approach which has been repeatedly rejected by this Court. The validity of the Board's findings must be determined on the basis of "the whole congeries of facts." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588. The various relevant facts must be considered both by the Board and the reviewing courts "not in isolation but as part of a pattern of events". *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 539.[16]

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[15] Petitioner's contention that its employees should be removed from the protection of the Act for the duration of the war (Pet. 25–27) is entirely without merit. The importance of maintaining peaceful labor relations is increased rather than diminished in wartime, and the preservation of such relations depends primarily on the right of employees to resort to the Government. Furthermore, a similar contention was rejected by this Court in the *Southern Bell* case (319 U. S. 50) when it reversed the decision of the Circuit Court of Appeals for the Fifth Circuit (129 F. (2d) 410, 415; see also Southern Bell's Brief in this Court, pp. 79–80).

[16] See also *National Labor Relations Board* v. *Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 57–58; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 79; *National Labor Relations Board* v. *Harbison-Walker Refractories Co.*, 135 F. (2d) 837, 838 (C. C. A. 8); *National Labor Relations Board* v. *Precision Castings Co., Inc.*, 130 F. (2d) 639, 641 (C. C. A. 6); *Canyon Corporation* v. *National Labor Relations Board*, 128

Thus, this case does not turn solely on the events of March 1934, "divorced from the events immediately preceding and following" (*International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 78), as petitioner contends (Pet. 17–20). Neither does it present in isolation the question of support granted to a labor organization pursuant to collective bargaining agreements (Pet. 23–25). The court below properly treated the various elements in this case as "symptomatic" of a pattern of events which disclosed illegal restraints upon the employees (R. 1524).

The distinctions which petitioner makes between the instant case and the cases decided by this Court involving company domination (Pet. 17–20) are fallacious not only because they rest on fundamental misconstructions of the record (*supra*, pp. 14–19), but also because they reveal no more than factual differences which do not affect the basic principles of decision. Here, as in *National Labor Relations Board* v. *Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 60, "the Association prior to the passage of the National Labor Relations Act in 1935 was obviously a company dominated and supported union." Moreover, petitioner's complete subsidization of the Association after passage of the Act, and particu-

F. (2d) 953, 955 (C. C. A. 8); *National Labor Relations Board* v. *Christian Board of Publication*, 113 F. (2d) 678, 683 (C. C. A. 8).

larly after the Employees' Exchange arrangement was initiated, went far beyond the "minor favors" deemed significant in the *Southern Bell* case (319 U. S. at pp. 57–58). As the court below held (R. 1524), "the decision of the Board to the effect that the Association was and is subject to the petitioner's domination and control is amply supported by the evidence."

In the light of all the foregoing, which discloses that petitioner engaged in the unfair labor practice of dominating and controlling a labor organization (sec. 8 (2)), it was plainly the Board's duty under Section 10 (c) to require petitioner to withdraw recognition from and disestablish the company-dominated Association.

3. The evidence described in the Statement amply supports the Board's findings that petitioner discriminatorily discharged Walter Weigand and Milton T. Davis, in violation of Section 8 (3) and (1) of the Act. Petitioner's contention is that there is insufficient evidence to support the Board's finding that the management had knowledge of the shift in allegiance of the two employees from the Association to the Union (Pet. 11–12, 27–28). But the Board could have inferred such knowledge from nothing more than the sudden change in treatment accorded these employees and petitioner's implausible explanations of its conduct (*supra*, pp. 11–12, 13). Contrary to petitioner's assertion, this question was passed upon by this Court when it held in *National*

Labor Relations Board v. *Link-Belt Co.*, 311 U. S. 584, 602,[17] that—

> The Board was justified in relying on circumstantial evidence of discrimination and was not required to deny relief because there was no direct evidence that the employer knew these men had joined [the Union] and was displeased or wanted to make an example of them.

CONCLUSION

The opinion below is correct and presents no question of general importance. There is no conflict of decisions. The petition should therefore be denied.

Respectfully submitted.

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[17] See also *National Labor Relations Board* v. *Abbott Worsted Mills, Inc.*, 127 F. (2d) 438, 440 (C. C. A. 1); *National Labor Relations Board* v. *Keystone Freight Lines*, 126 F. (2d) 414, 417 (C. C. A. 10); *F. W. Woolworth Co.* v. *National Labor Relations Board*, 121 F. (2d) 658, 660 (C. C. A. 2); *National Labor Relations Board* v. *Entwistle Mfg. Co.*, 120 F. (2d) 532, 535–536 (C. C. A. 4).